

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Monteith Analyst: Gloria McConnell Bill Number: SB 685

Related Bills: \_\_\_\_\_ Telephone: 845-4336 Amended Date: 06/15/99

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Due Process/Notice Before Levy and After Lien/Federal Conformity

## SUMMARY OF BILL

This bill would conform, with some modifications, to two provisions of the Taxpayer Protections and Rights contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Reform Act). This bill would require Franchise Tax Board (FTB) to notify tax debtors:

1. within five business days of filing or recording of notice of a state tax lien that such notice of lien has been filed. During the 30-day period following notification, tax debtors may request an independent departmental administrative review.
2. at least 30 days before it intends to levy. The notice would have to include the proposed actions that may be taken (but does not require itemizing the property) and the laws and procedures relating to the release of levy. The notice would have to be given by first class mail to the address of record, unless mail to the same address was returned undelivered with no forwarding address, in which case notice would not be required. No levies may be made during the 30-day period. If the tax debtor were to request a departmental independent administrative review, collection action must be suspended during the review period plus 15 days. The provisions would not apply to jeopardy assessments, but FTB would be required to give these tax debtors an opportunity for hearing within a reasonable time.

Issues subject to review for liens and levies would include spousal defenses or collection alternatives. In conducting the review, consideration would be given as to whether the collection action balances the need for collection of the debt with the legitimate concern that any collection action be no more intrusive than necessary. The independent departmental administrative review would not be subject to the formal Administrative Procedures Act (APA) requirements.

Additionally, under this bill, if the FTB holds the collection of an account in abeyance for more than six months, the FTB would be required to mail a notice to the taxpayer before issuing a levy or filing or recording a notice of state tax lien.

## SUMMARY OF AMENDMENT

The amendment of June 15, 1999, adds the above provisions #1 and #2. This analysis addresses only those two provisions. FTB's prior analysis still applies as to the additional provision.

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald Goldberg

6/24/1999

#### EFFECTIVE DATE

This bill would be operative for collection actions initiated more than 180 days after the effective date of the bill. Assuming enactment in 1999, the effective date of the bill would be January 1, 2000. Consequently, the bill would be operative for collection actions initiated after July 1, 2000.

#### LEGISLATIVE HISTORY

SB 94 (Chesbro; 1994) would conform, with some modifications, to 25 selected provisions of the Taxpayer Protections and Rights contained in the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Reform Act), which include the two provisions contained in this bill. According to the author's staff, SB 94 will be amended to remove the two provisions that are added to this bill.

#### BACKGROUND/HISTORY

On July 22, 1998, President Clinton signed H.R. 2676, the Internal Revenue Service Restructuring and Reform Act of 1998 (IRS Reform Act). The IRS Reform Act provides for a massive reorganization of the way the IRS does business and creates a board of directors to help oversee the agency. The IRS Reform Act also provides various taxpayer protections and instructs the IRS to promote and improve its electronic filing programs.

#### SPECIFIC FINDINGS

**Under the IRS Reform Act,** the IRS is required to notify tax debtors by notice given in person, left at their dwelling or business or by mail, when a notice of lien has been filed or it intends to levy. In the case of a notice by mail, the notice must be registered or certified mail, return receipt requested. The notice of the filed lien must be mailed within five business days after the filing of the lien and the notice of intent to levy at least 30 days before making a levy. The notice of intent to levy must include the proposed action(s), but does not require itemizing the property. The notification must include information regarding the redemption of property and releasing of liens.

During the period following notification, tax debtors may request a hearing before an appeals officer with no prior involvement in the case. Issues may include spousal defenses and collection alternatives, and the tax debtor may challenge the underlying tax liability if the tax debtor did not receive statutory notice of deficiency or did not have an opportunity to dispute the tax liability. Tax debtors may seek judicial review of the hearing officer's findings. If a hearing or appeal is timely requested, levy action must be suspended until 90 days following a final determination, unless the court otherwise allows levy. These provisions do not apply to state tax offset procedures and jeopardy or termination assessments, but these tax debtors shall be given an opportunity for hearing within reasonable time.

**Under current state law,** if FTB determines there is a tax deficiency, it mails a notice of proposed assessment (NPA), and the taxpayer has 60 days to protest the assessment or it becomes final. Once the assessment is final, the taxpayer is mailed a statement of tax due. If the taxpayer disagrees with the amount of the final assessment, the assessment must be paid and a claim for refund filed, unless it is obvious that the assessment is in error, in which case the assessment may be abated without payment.

**Under FTB's current practice**, if the account remains unpaid, the tax debtor generally receives several collection notices. The notices are mailed first class to the address of record, unless mail to the same address was previously returned. FTB is required to mail notice of intent to file a lien at least 30 days before the lien is filed (RTC §21019). According to the Civil Code (Section §2885), a notice of state tax lien must be mailed to the tax debtor unless mail to that address was previously returned undeliverable with no forwarding address.

During 1996, FTB filed through its automated system approximately 300,000 liens on tax debts in excess of \$250. However, recently FTB has increased from \$250 to \$1,000 the amount of tax debt that would be subjected to a lien filed through its automated system. This increase in the tax amount is expected to decrease the filing of liens by approximately 35%.

**Under FTB's current practice**, a statement of tax due (STD) is mailed as a first notice with respect to all tax debts. If the debt remains unpaid, FTB generally will mail a notice stating that unless payment is made, collection action may be taken (involuntary collection billing cycle), and including a general statement as to the type of collection actions that FTB may take. However, when a debt posts to an account on which there is an existing debt that has entered the involuntary collection billing cycle, an STD is the only notice mailed on the new debt. The debts are then consolidated and the involuntary collection billing cycle continues, which may include levies.

After a levy attaches to bank accounts or other cash equivalent property, or an employer receives a wage levy, the tax debtor is given at least 10 days to resolve the matter before the amounts levied are remitted to FTB. In the event property is to be sold, the debtor is provided a special hearing in accordance with case law at least 20 days before property may be sold and the funds remitted to FTB. While tax debtors have no formal process for appealing collection actions, they may contact the Taxpayers' Rights Advocate if staff cannot resolve the collection issue. During this period of conflict, collection is stayed only at the discretion of staff.

**Under California law**, only real property sold under judicial foreclosure pursuant to a mortgage or deed of trust is subject to redemption by the debtor (Code of Civil Procedure [CCP] 729.010 et seq.). Sales of property to satisfy any other debt, including tax debts, are not subject to redemption.

**Under this provision**, FTB would adopt provisions similar to the federal provisions except:

- For notification that a lien is filed or intent to levy, notice would be made only by first class mail and would include information about release of levy, but this provision would not require FTB to provide information on its notices regarding redemption of property or releasing liens. Notice would not be required only if mail to the same address was returned undeliverable with no forwarding address.
- For notice before a levy, notice would not be required if the debt to which the levy is made were consolidated with a debt for which collection actions may be commenced.
- The tax debtor's issues with respect to the filing of the lien or intent to levy would be subject to an independent departmental administrative review

instead of an appeals officer. The review would not be subject to California's formal APA requirements.

- The issues subject to review for either the filing of the lien or intent to levy could not include challenging the underlying tax, and the findings of the review would be final and not subject to appeal.
- The suspension from levying would be for 15 days following the review determination instead of 90 days as allowed by the IRS.

#### Policy Considerations

- Current procedures for mailing FTB lien notices are governed by general Civil Code sections that apply to all state agencies. Requiring first class mail for lien notification to conform to the federal provision would place FTB out of conformity with all other state agencies and have a major impact on departmental costs.
- The independent departmental administrative review is intended to be a simple, informal process to quickly resolve collection issues, which would not be conducive to the formal process of the Administrative Procedure Act (APA). Therefore, this provision expressly would exempt the review from the APA, as are protest hearings of proposed tax deficiencies, jeopardy assessment and other informal hearings given by the FTB pertaining to collection matters.
- This bill generally would require FTB to provide California taxpayers the same due process notifications currently required of Internal Revenue Service for federal taxpayers.

#### Implementation

This provision could be implemented without significant procedural, workload or system changes. FTB is in the process of designing a new automated accounts receivable collection system (ARCS), scheduled for implementation during late fiscal year 1999/00 (March 2000). This bill would be implemented in conjunction with ARCS. It is anticipated that the notice prior to levy would be accomplished by one or more of the notices that FTB anticipates would be issued via FTB's new collection system currently under design.

## FISCAL IMPACT

### Departmental Costs

This provision should not significantly increase departmental costs.  
However:

- To the extent requests for administrative review are made under this provision that otherwise would not have been resolved by FTB staff under an existing workload, there would be costs for that additional workload.
- To the extent strategies or the design of the ARCS must be reformulated, costs currently budgeted for this system could be exceeded.
- There could be a minor additional workload for the Legal Branch due to this provision.

### Tax Revenue Estimate

Collection losses from this provision would result in negligible revenue losses if any (less than \$250,000 annually based on federal projections).

## BOARD POSITION

Pending.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to sponsor legislation to conform to the 25 provisions of the Taxpayer Protections and Rights contained in the IRS Reform Act. The bill, as amended, includes two of the 25 provisions. The board has not considered the additional provision in this bill.